MICHIGAN DEPARTMENT OF
CIVIL RIGHTS

March 7, 2013

Re: SB-136 (2013)
Testimony before the Senate Health Policy Committee

Mr. Chair, Committee members,

On behalf of the Department of Civil Rights, I ask that you not report this bill, at least not in its present form. It does not appear that the bill has substantially different from last session's SB-975, so I am attaching our comments on that bill to my written testimony. That said, there is one difference between the two – and it is quite telling.

Added since last session are the statements that a "health facility" (Section 5(2), p 5) and "health provider" (Section 9(9)(d), p 12) cannot object "as a matter of conscience" based on a patient's "status."

The term "status" is however, not defined in the bill. I am not entirely certain how a court would define the term absent legislative direction, but it I'm certain it would start by looking at its plain meaning. While it is unclear what the common meaning is, it is clear what it is not? Imagine walking into an operating room and asking "Doctor, what is the patient's status?" It is safe to assume that the answer is unlikely to be "(s)he's gay."

But the possibility that the patient may be gay, or may be the offspring of an unmarried or intermarried couple, or might be suffering from a malady that is the result of behavior others find objectionable that led to insertion of the word "status" in a House Substitute last session. That substitute, however, did define the term status to include things like the patient's race, religion, and in particular their sexual orientation.

The failure to define "status" renders its inclusion meaningless. That the bill stalled last session only after clarifying that a contentious objection could not be based on a patient's "status," and the failure to include last session's definition of "status," suggests the possibility that at least some of the bill's supporters wish to preserve the ability to object to treating a patient based on the patient's behavior or personal characteristics. This perception can only be addressed by defining what it is that cannot form the basis of an objection. This Committee should not refer the bill without first clarifying what it will and will not do if enacted.

Unless (and until) the term "status" is defined, or objections based upon an opinion about the patient or patient's conduct are otherwise specifically prohibited, the proposed legislation permits such objections and must not be passed into law. If the conditions where now to be clarified to include all characteristics and behaviors other than those related to sexual orientation, an intent to permit refusals to treat for this reason would be equally clear, and equally objectionable.

A related question that this Committee must answer and address before considering a vote on

referring the bill is what the intent and effect are of providing that the patient's "status" cannot be the basis for an objection by a "health facility" or a "health provider" (as "cited above), but not providing similar provisions for a "health care payer," "health care purchaser," or "health care service?"

I wish to note that nothing in this statement should be interpreted as indicating the Civil Rights Department, or Civil Rights Commission, have a position on the merits of a religious objection to being required to provide medical services related to an abortion. I would not be here if that was all this bill did. I neither know, nor intend to represent either body's position in this regard, or that of either's individual members. The Department's opposition to the bill in its present form is consistent with our history, mission and previous Commission direction. It is neither supportive nor dismissive of a legislative desire to provide conditions under which health care professionals not be compelled to participate in a particular procedure or treatment like abortion which they hold to be morally or religiously objectionable. Our position is that any such legislation clearly limits the ability to object to only specific procedures or practices and never permit for an objection that is in anyway related to the patient, patient's behavior, patient's associations, or patient's "status".

Simply put, religious freedom is indeed an important liberty that must be protected. This principle guarantees each person the right to hold beliefs that others may find offensive, but it is not without limit. A doctor, nurse, hospital, clinic, insurer or insurance provider may be guaranteed the religious freedom to believe that a particular patient only needs a treatment as a result of their "sinful" behavior. Health professionals may as a matter of genuine conviction believe that a patient's malady is the "will of" or even a "punishment from" a holy being. They cannot, however, be permitted to refuse to provide for a patient's needs based upon such personal convictions.

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MICHIGAN DEPARTMENT OF
CIVIL RIGHTS

December 12, 2012

Re: SB-975
Testimony before the House Insurance Committee

Mr. Chair, Committee members,

On behalf of the Department of Civil Rights, I ask that you not report this bill. While there are legitimate questions about when and how the religious freedom of medical professionals can be reconciled with patients' rights in a constitutionally balanced way, this bill is far broader than that discussion would allow for. It does not distinguish between religious/philosophical/moral opinions about the medical procedure vs. those about the morality of the person receiving it. It would disproportionately impact women's health issues (and at least for the time being decisions being made by men). It is unclear how this bill might affect end of life decisions, but it certainly would appear to move considerable decision making authority from patients to doctors.

The bill's key term "conscience" is not sufficiently defined. It is either too broad or too narrow, depending on how it is read – and therefore unconstitutionally vague. The bill's direct reference to "God or the tenants of an established religion" raises questions about the First Amendment's admonition that government "make no law respecting an establishment of religion."

I'm going to pose just a few questions that have answers which I think demonstrate how this bill is ill advised, unconstitutional and bad public policy. I'm also going to include some questions that I honestly don't know the answers to.

If you answer any of these questions with a yes, you have a responsibility to oppose the bill's passage. And, Mr. Chair, Representatives, if (like me) your answer to even just one question is "I don't know" -- then I respectfully assert it is irresponsible to vote in favor of this bill before you get the answer.

- Is it possible that a doctor, nurse, or insurer can refuse to provide services to a gay AIDS patient?
- Could a hospice or nursing home insist on providing extraordinary end of life measures to a patient over his or her express wishes? Could the nursing home next door refuse to provide the same measures (as contrary to the designs of "the creator") expressed in the directive of one of their patients?
- Will individual employees of each nursing home then be able to refuse to follow their employer's policy because it violates their "moral principles . . . philosophy or belief system"?

- Would a clinic have the ability to treat persons with sexually transmitted diseases only if they are married? … only if their spouse had the STD first?
- Can a doctor whose "recognized philosophy" condemns mixing of races refuse to treat the child of a mixed race couple? … the mother prior to or during delivery?
- Clearly this bill would permit an individual pharmacy to refuse to provide contraceptives to a customer, or a pharmacist to instruct the customer to come back the next day when a 'less moral' pharmacist will be on duty – but could a pharmacist who believes protected sex is permissible but only in marriage require proof of the marriage before providing birth control pills? Would a police report showing rape be required for filling an RU486 prescription?
- Is it up to every hospital to ensure that they have a full emergency room staff on duty whose conscience allows them to participate in aborting a fetus in order to save an accident victim's life? Are they therefore permitted to ask the question as part of an employment interview?
- Many of this bill's sponsors are also sponsors of HB-4769/SB-701, the "anti-Sharia" laws, if one of those bills also passes would courts be permitted to enforce this law only with respect to religions and philosophies that are not "foreign"?
- Must a medical school permit a student to opt out of operating with, or training under, members of the opposite sex?
- May an insurance provider exclude injuries sustained while engaged in "immoral" activities? Would this include hunting?

There are many, MANY, more such questions, but I think this is a fair start. Perhaps, in time and with well-reasoned discussion and after due consideration these questions can be appropriately resolved. If this passes now, we may never know.

I, and MDCR, believe that the language before you today requires that many if not all of these questions be answered yes. At best though, I believe the answers to the questions are unclear. What is clear is that if you can't answer every one of these questions "absolutely not" then the most important question for today will be "do you support this bill?" In response to that question there is only one responsible answer: "absolutely not".

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